IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3759 of 2005

Between:

S.Suresh Kumar, S/o.Bal Lingam,
H.No.21-67-1, Maruthinagar, Achampet (V&M)
Mahaboobnagar Dist.

..... PETITIONER

AND

1. Joint Collector & EOED, A.P.State Civil Supplies Corporation Ltd., Mahaboobnagar.
2. The State Civil Supplies Corporation Ltd., Head office at Civil Supplies Bhavan, H.No.6-3-655/1/A, Somajiguda, Hyderabad rep.by its District Manager, Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, direction more particularly one in the nature of writ of certiorari calling for the records relating to proceedings of joint collector, Movt.1(854)/2004-05/Stage-II, dated 17-2-2005 issued by the joint collector, Mahaboobnagar District terminating the petitioner as stage-II contractor of the MLS point, Achampet, Mahaboobnagar District received by the petitioner on 19/2/2005 by declaring the proceedings is illegal unjustice and quash the same so as to enable the petition to continue as stage-II contractor, MLS point, Achampet till the expiry of his (2) years term i.e, upto 16-05-2005.

Counsel for the Petitioner:MR.P.ANILKUMAR REDDY

Counsel for the Respondent Nos.1 and 2: MR.D.LINGA RAO

The Court at the admission stage made the following O R D E R:

Challenging the proceedings of the Joint Collector dated 17.02.2005, the present writ petition is filed.

The brief facts that are necessary for the disposal of the writ petition may be stated as follows:

Petitioner was appointed as Stage-II Transport Contractor for M.L.S. Point Achampet, Mahaboobnagar District in May, 2003 for a period of two years. Pursuant to the said appointment, an agreement was entered into between the petitioner and the second respondent Corporation on 17.05.2003. The duty of Stage-II Contractor is to lift the stocks from the M.L.S. Point, Achampet and deliver the stock to the various Fair Price Shops in four Mandals of Achampet area as per the orders of the concerned authorities. Alleging that the petitioner has not delivered the stocks at the M.L.S. Point upto 3.00 P.M. on 05.11.2004, a show cause notice dated 05.01.2005 was issued calling for explanation as to why his contract for M.L.S. Point Achampet should not be terminated. The Joint Collector, first respondent, after considering the explanation offered by the petitioner, passed the impugned proceedings terminating contract of the petitioner for the M.L.S.Point Achampet. Questioning the same, the present writ petition is filed.

Learned counsel for the petitioner contended that there is no diversion or misuse of stock by the petitioner and, therefore, no loss has been caused to the Corporation. Hence, the order under challenge suffers from serious legal infirmities so as to call for interference of this Court.

Learned standing counsel appearing for the respondents contended that as per Clause 7 of the agreement, after affording reasonable opportunity to the petitioner, the contract of the petitioner was terminated since it is a clear case that stocks were not delivered at the M.L.S. Point, Achampet, upto 3.00 P.M. on 05.11.2004. He further contended that it is purely a question of fact, which cannot be decided under Article 226 of the Constitution of India.

The petitioner was appointed as Stage-II Transport Contractor for M.L.S. Point Achampet for the year 2003-05, and to that effect, an agreement dated 17.05.2003 was entered into between the parties. It is a contractual matter where the parties are bound by the terms and conditions of the contract. On the allegation that the petitioner has not delivered the stocks at M.L.S.Point upto 3.00 P.M. on 05.11.2004, the Joint Collector issued show cause notice. Petitioner contends that he did not divert the stock but as the lorry got damaged, the stock was lifted into another lorry belonging to the father of the petitioner and hence, there is no diversion of stock. The contention raised by the petitioner is purely a disputed question of fact, which has to be decided by the competent forum. Whether the stocks were diverted or whether the stocks remained undelivered at the M.L.S.Point upto 3.00 P.M. on 05.11.2004 or whether there was break down to the lorry are required to be gone into by the competent authority.

Therefore, I am of the considered opinion that since it is a question of fact, which has to be decided by the competent authority and that the order of the Joint Collector is not shown to have been passed contrary to the terms and conditions of the agreement, the impugned proceedings cannot be quashed. Hence, the writ petition is liable to be dismissed and is accordingly dismissed at the admission stage. No costs.

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(K.C.BHANU,J)

Dt:29.03.2005

Note:CC in two days

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To

1. The Joint Collector & EOED, A.P.State Civil Supplies Corporation Ltd., Mahaboobnagar.

2. The District Manager, State Civil Supplies Corporation Ltd., Head office at Civil Supplies Bhavan, H.No.6-3-655/1/A, Somajiguda, Hyderabad Mahaboobnagar District.

3. Two CD copies.